Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

MAC BABB,

Petitioner,

v.

HELEN LAVON THOMPSON and
CHARLES D. WIRIDEN, JR.,

Respondents.

On Petition For Writ of Certiorari
To The Court of Appeals of North Carolina

PETITION FOR WRIT OF CERTIORARI

My Name:
Mac Babb, Pro Se
4668 Little River Road
Little River, SC 29566
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27 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Courts of North Carolina violated the plaintiff's right to have a judgment rendered in South Carolina given full faith and credit in North Carolina.

2. Whether the plaintiff's right to have his full faith and credit claim fairly adjudicated was compromised when the Courts of North Carolina refused to use a method in reaching a decision which was clearly superior to the method used.

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IN THE
SUPREME COURT OF THE UNITED STATES

MAC BABB,	)
Petitioner,	)
	)
v.	)
	)
HELEN LAVON THOMPSON and,	)
CHARLES D. WIRIDEN, JR.,	)
Respondents.	)

Petition for a Writ of Certiorari to the
North Carolina Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Mac Babb, the petitioner herein respectfully prays that a writ of certiorari issue to review the judgment of the North Carolina Court of Appeals entered in the above entitled case in an unpublished opinion, No. C0A00-4 filed on 6 February 2001. The Supreme Court of North Carolina denied discretionary review on 19 July 2001, File No. 174801. The Court of Appeals opinion is reprinted in the separate appendix to this petition.

STATEMENT OF JURISDICTION

The opinion of the North Carolina Court of Appeals was entered on 6 February 2001. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1257(a).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

Article IV Section 3 Constitution of the United States "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.

And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved and the effect thereof."

STATEMENT OF THE CASE

In this case the plaintiff is attempting to enforce in North Carolina a judgment entered in South Carolina. The plaintiff procured a default judgment against the defendants in South Carolina. He filed the judgment in Mecklenburg County, North Carolina pursuant to Article 17, Chapter 1C of the General Statutes of North Carolina. The Superior Court, Mecklenburg County, North Carolina denied the plaintiff's motion to enforce the judgment. The plaintiff appealed the case to the North Carolina Court of Appeals and made a motion to continue. The Court of Appeals denied the motion to continue and affirmed the Superior Court. The plaintiff petitioned the Supreme Court of North Carolina for discretionary review and made a motion to continue. The Supreme Court of North Carolina denied the motion to continue and the petition for discretionary review.

REASONS FOR GRANTING THE WRIT

The Full Faith and Credit Clause mandates that the judgment be treated in North Carolina as it is treated in South Carolina. Baker v. General Motors Corporation, ___ U.S. ___, 139 L.E.2d 580, 591 (1998). In this case the defendants have made a motion in South Carolina to set aside the judgment which was denied. The defendants have appealed in South Carolina. When the courts of South Carolina decide the case we shall know how the judgment would be treated in South Carolina. The judgment should be treated accordingly in North Carolina.

The plaintiff made a motion in the North Carolina Court of Appeals and the Supreme Court of North Carolina to continue the case until it is decided in South Carolina. Both courts denied the motion. The method used by the North Carolina Court of Appeals to decide the case is not as accurate a method as the one suggested by the plaintiff. The plaintiff is entitled to have the case decided by the more accurate method,

which is to wait until the courts of South Carolina decide the case and decide the case in North Carolina accordingly.

CONCLUSION

For the foregoing reasons the petitioner respectfully prays that the petition for a writ of certiorari be granted.

Respectfully submitted,

Mac Babb, Pro Se
4668 River Road
Little River, South Carolina 29566
Telephone: (843) 249-3700

NO. COA00-4

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2001

MAC BABB,
Plaintiff,

v.

Mecklenburg County
No. 98 CVS 1104

HELEN LA VON THOMPSON
and CHARLES G. WIRIDEN, JR.,
Defendants.

COURT OF APPEALS SLIP OPINION

Appeal by plaintiff from orders entered 4 and 26 October 1999 by Judge J. Marlene Hyatt in Superior Court, Mecklenburg County. Heard in the Court of Appeals 9 November 2000.

Webb & Webb, by John Webb, for plaintiff-appellant.
Weaver, Bennett & Bland, P.A., by Joseph T. Copeland and Michael David Bland, for defendant-appellee Helen La Von W. Thompson.

TIMMONS-GOODSON, Judge

This action originated in Horry County, South Carolina. Mac Babb ("plaintiff") sued Helen La Von W. Tompson ("Thompson") and Charles G. Wiriden, Jr. ("Wiriden") (collectively "defendants") concerning a dispute pertaining to property jointly owned by plaintiff and Thompson. Following an appeal in which the South Carolina Court of Appeals awarded the plaintiff a new trial on the issues of damages, the South Carolina Court of Common Pleas entered a default judgment in plaintiff's favor. The North Carolina Superior Court, Mecklenburg County, refused to enforce the South Carolina judgment in this State. Plaintiff now appeals.

The pertinent procedural background is as follows: In the course of pending litigation between plaintiff and defendants in South Carolina, defendants failed to respond to plaintiff's discovery request. Based on plaintiff's motion to compel and by order to execute on 7 July 1997, the South Carolina court ordered defendants to produce all documents requested by plaintiff. Defendants did not comply with the 7 July 1997 order.

On 26 November 1997, the South Carolina court held a hearing "upon the Court's own Motion of non-compliance by [defendants] with the terms of this Court's Order dated July 7, 1997." Plaintiff, proceeding *pro se,* and defendants' attorney, J.M. Long ("Long"), were present at the hearing. Long introduced evidence indicating that due to her "serious medical condition," Thompson would be "unable to appear in court at that time indefinitely." This evidence included a letter from Dr. James McDeavitt, expressing his opinion that Thompson was: unable to appear in court indefinitely due to her serious medical condition." A statement from Dr. Doddana Krishna further indicated that Thompson was unable to travel due to various medical infirmities, including a brain tumor and a "celebrovascular accident." In an order dated 1 December 1997, South Carolina court ordered defendants to "produce all documents requested by [plaintiff] within thirty (30) days of [the] November 26,1997, hearing." The court further ordered that if defendants failed to comply, their answers and other filings would be stricken, and they "will therefore be in default and [plaintiff] awarded monetary damages and all costs of the matter." The court noted that defendants' attorney informed the court that "he [was] resigning his representation of [defendants] in this matter if [defendants] do not comply with this Order." Both plaintiff, proceeding *pro se*, and Long consented to the 1 December 1997 order. The court's order did not reference Thompson's medical condition or its effects on her ability to participate in the litigation.

On 6 January 1998, the South Carolina court found defendants in default and in contempt of court for their failure

to comply with its 7 July and 1 December 1997 orders. The court ordered that defendants' pleadings be stricken and awarded plaintiff damages and attorney fees as specified in his complaint.

Pursuant to section 1C-1703 of our Generic Statutes, plaintiff filed a "NOTICE OF FILING OF FOREIGN JUDGMENT" in North Carolina Superior Court on 26 January 1998. The South Carolina trial court subsequently denied Thompson a motion to reconsider the 6 January 1998 judgment in January 1999, and Thompson appealed that denial.

On 23 March 1999, Thompson filed a motion for relief from foreign judgment in North Carolina Superior Court, arguing that the South Carolina judgment was unenforceable in this State because an appeal was pending in South Carolina. On 11 August 1999, the South Carolina Court of Appeals dismissed Thompson's appeal, holding that under South Carolina law, the judge who denied relief did not have subject matter jurisdiction to reconsider the default judgment. The South Carolina appellate court noted, however, that Thompson's motion for reconsideration was still pending in trial court, which may act on it "as it deems appropriate."

Following the dismissal of her South Carolina appeal, Thompson argued in North Carolina Superior Court that the South Carolina judgment was unenforceable because she never received notice of the 26 November 1997 hearing, she was mentally incompetent at the time of the 26 November 1997 hearing and at the time of default judgment was entered, and her attorney was negligent. Thompson filed affidavits from her doctors and family supporting her arguments. Plaintiff then moved for enforcement of the foreign judgment in this State.

On 4 October 1999, the North Carolina Superior Court granted Thompson's motion for relief from foreign judgment and denied plaintiff's motion to enforce the foreign judgment. The court made the following factual findings:

6. Based upon the affidavits of Defendant Thompson's physicians, this Court finds that Defendant Thompson was not competent to participate in this litigation on November 26, 1997...

7. There is no indication in the January 6, 1998 order of default judgment that either Defendant Thompson or her attorney of record received notice of the November 26, 1997 hearing.

8. Defendant Thompson did not have notice of the November 26, 1997 hearing by the South Carolina Court.

9. ...[A]s a result of Defendant Thompson's brain tumor and stroke, she was not competent to proceed with her defense on November 26, 1997.

The court concluded:

1. Defendant Thompson did not have notice of the November 26,1997 hearing in which the South Carolina Court...entered a Default Judgment against her.

2. As a result of Defendant Thompson's brain tumor and stroke, she was not competent to proceed with her defense on November 26, 1997.

In so concluding, the North Carolina court held that the South Carolina judgment was not entitled to full faith and credit under either the United States or State Constitutions because Thompson was not competent to proceed with a defense and because she did not receive notice of the 26 November 1997 hearing. On 26 October 1999, the court denied plaintiff's motion for a new trial and/or to alter/amend judgment. The court did, however, correct a clerical error in judgment which has no relevance to the issues on appeal.

Plaintiff appeals the trial court's order granting Thompson's motion for relief from foreign judgment and denying plaintiff's motion to enforce judgment, and the court's order denying his motion for a new trial and/or to alter/amend judgment. Plaintiff argues that the South Carolina judgment was entitled to full faith and credit in this State. We first

address plaintiff's argument that the trial court erred in refusing to enforce the judgment based on Thompson's mental incompetence.

The Uniform Enforcement of Foreign Judgments Act ("the Act"), adopted by North Carolina in 1989, provides a procedure by which a judgment creditor may seek to enforce foreign judgments in this State. N.C. Gen. Stat. section 1C-1701, *et seq.* (1999). A judgment creditor may file an authenticated copy of foreign judgment in Superior Court and give notice of the filing to the judgment debtor. N.C.G.S. section 1C-1703 (a). If the judgment debtor takes no action within thirty days, the judgment s enforced as any other judgment in this State. N.C.S.G. section 1C-1704 (b). However, "as long as defendant-debtor acts before enforcement," *Security Credit Leasing, Inc. v. D.J.'s of Salisbury*, ___N.C. App. ___, ___, 537 S.E. 2d 227, 231 (2000), debtor may delay enforcement by filing "a motion for relief form, or notice of defense to" the foreign judgment "on any ground for which relief from a judgment of this State would be allowed," N.C.G.S. section 1C-1705 (a).

The judgment is then stayed until the judgment creditor moves for enforcement. N.C.G.S. section 1C-1705 (b). Upon such motion, a hearing will be held where the judgment creditor has the burden of proving whether "the foreign judgment is entitled to full faith and credit." *Id.* The introduction of a properly authenticated copy of the foreign judgment raises a presumption that it is entitled to full faith and credit. *Lust v. Foundation of Life, Inc.*, 110 N.C. App. 298, 429 S.E. 2d 435 (1993).

Under Article IV, section 1, the United States Constitution, a judgment rendered in another state is entitled to full faith and credit in the courts of this State. U.S. Const. Art. IV, section 1; see also 28 U.S.C. section 1738 (1994). It follows that our courts are to treat foreign judgments the same

as domestic judgments, giving them no more or no less deference. *Security Credit Leasing*, ___ N.C. App. At ___, 537 S.E. 2d at 231.

Before a foreign judgment is entitled to full faith and credit in this State, it must first "be deemed to have satisfied certain requisites of a valid judgment." *Boyles v. Boyles*, 308 N.C. 488, 491, 302 S.E. 2d 790, 793 (1983) (citation omitted). Accordingly, the presumption that a foreign judgment is entitled to full faith and credit may be rebutted by evidence of its invalidity. *Lust*, 110 N.C. App. At 301, 429 S.E. 2d at 437. A foreign judgment is invalid if:

The rendering court did not have subject matter jurisdiction, did not have jurisdiction over the parties, that the judgment was obtained by fraud or collusion, that the defendant did not have notice of the proceeding, or that the claim on which the judgment is based is contrary to the public policies of North Carolina.

Id. (citations omitted); *see also* N.C.G.S. Section 1C-1708 ("The provisions of the Article shall not apply to foreign judgments based on claims which are contrary to the public policies of North Carolina.")

To determine whether a foreign judgment is invalid, we look to "'the statutes and decisions of the courts of the state in which the judgment was rendered.'" *Boyles*, 308 N.C. at 494, 302 S.E. 2d at 795 (quoting Restatement (second) of Conflict of Laws section 105 cmt. B (1971)). South Carolina Rule of Civil Procedure 55 (b) (1) states, in pertinent part, "[N]o judgment by default shall be entered against a minor or incompetent person unless represented in the action by guardian and litem who has appeared therein." S.C.R. Civ. P. 55(b) (1). We found no South Carolina cases specifically addressing the application of this provision.

However, the South Carolina Supreme Court has held that when a court enters judgment of any kind against a mentally incompetent individual without first approaching a

guardian litem, that judgment is void for lack of jurisdiction. *Rogers v. Nation*, 326 S.E. 2d 182, 184 *S.C. Ct. App. 1985); see *also South Carolina Dep't of Social Servs. V. McDow*, 280 S.E. 2d 208, 209 (S.C. 1981) (percuriam) ("In cases where a court adjudicates the rights of mentally incompetent persons without appointing guardians *ad litem*, any judgment rendered by the court adverse to the incompetent person is void for want of jurisdiction"); *Ex parte Kibler*, 31 S.E. 274 (S.C. 1989); 53 Am. Jur. 2d *Mentally Impair Persons* section 174 (1996). South Carolina is in the minority of courts addressing this issue. See generally 53 Am. Jur. 2d section 172 ("several courts have ruled that an entry of judgment against an incompetent, even in the absence of a guardian, does not render the judgment void, but merely voidable.")

South Carolina courts grant relief from judgment based on one's metal incompetency when a person's mental impairment was "' so great as to render her unable to comprehend or transact the ordinary affairs of life.'" *Rogers*, 326 S.E. 2d at 185 (citation omitted). "'It must be shown...by credible evidence that the subject, because of mental impairment, has become incapable of managing [her] own affairs whether from age, disease or affliction.'" *Id.* (alternation in the original) (citation omitted).

In holding that judgments entered without appointment of a guardian ad litem are void, the South Carolina Supreme Court has cited South Carolina Code section 15-5-310, which stated, "'[A] mentally incompetent person, whether hospitalized or not, shall appear by guardian ad litem in an action by or against him.'" *Id.* At 184 (quoting S.C. Code Ann. Section 15-5-310 (1876) (repealed 1985)); *South Carolina Dep't of Social Servs.*, 280 S.E. 2d 208. Although section 15-5-310 has since been repealed, "Rule 17(c) [of the South Carolina Rules of Civil Procedure] retains the principal provisions of Code [section] 15-5-310." S.C.R. Civ. P. 17(c)

report's note; see *cf. Zaragoza v. Zaragoza*, 420 S.E. 2d 516, 517 (S.C. Ct. App. 1992) ("We first note...[section] 15-5-310 w[as] repealed in 1985 and Rule 17 [] now governs such matters.") Rule 17 9 (c) specifies, in pertinent part:

Whenever a minor or incompetent person has a representative, such as general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or incompetent person does not have a duly appointed representative he may sue by his next friend or by guardian as litem. The court shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such order as it deems proper for the protection of the minor or incompetent person.

S.C.R. Civ. P. 17 (c).

Given that the function of section 15-5-310 is now governed by Rule 17 (c) and Rule (c) does not reflect a substantial change in the law, we find no import to the repeal of section 15-5-310 in relation to the South Carolina courts' position regarding judgments against mentally incompetent individuals. Therefore, under South Carolina law, when a judgment is entered against a mentally incompetent person who has not been appointed a guardian as litem, that judgment is void for lack of jurisdiction. It follows that because North Carolina Superior Court found that Thompson was mentally incompetent at the time the default judgment was entered against her there is no evidence indicating that she was appointed a guardian ad litem during the South Carolina proceedings, the default judgment is void for lack of jurisdiction and not entitled to full faith and credit in this State.

Plaintiff assigns as error the trial court's "holding that [Thompson] was not competent to participate in the action in South Carolina." However, plaintiff fails to present argument or authority to support the contention that the court's findings

regarding Thompson's mental incompetency are not supported by competent evidence. *See* N.C.R. App. P. 28(b) (5) ("assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned.") Those findings concerning Thompson's mental incompetence are therefore conclusive on appeal. *See Chance v. Henderson*, 134 N.C. App. 657, 661, 518 S.E. 2d 780, 783 (1999) (citation omitted) ("the trial court's findings of fact are conclusive on appeal when supported by competent evidence").

Plaintiff argues that because the issue of Thompson's incompetence was litigated and considered in the South Carolina courts, North Carolina courts are precluded from reconsidering that issue. We are not so persuaded.

As noted above, under South Carolina law, a court entering a judgment against a mentally incompetent person without first appointing a guardian implicates its own jurisdiction. The scope of our review regarding a sister state court's jurisdiction is very limited. *Boyles*, 308 N.C. at 491, 302 S.E. 2d at 792. Where questions of jurisdiction have been "'fully and fairly litigated'" in the court of origin, the judgment is presumed valid and enforceable in this State. *Id.* (citation omitted).

There is no indication in the record on appeal that any South Carolina court considered plaintiff's mental incompetency at the time of the 26 November 1997 hearing, the execution of the 1 December 1997 order threatening default, or the 6 January 1998 entry of default judgment. At the 26 November 1997 hearing, Long introduced evidence indicating Thompson's mental state. The small excerpt from that hearing contained in the record on appeal indicates that some discussion of Thompson's mental competency may have followed the introduction of Thompson's evidence, but the remainder of the hearing transcript was not contained in the

record on appeal, and we will not speculate as to its content. See N.C.R. App. P. 9(a) (our appellate review is confirmed to materials contained in the record on appeal).

More importantly, although the South Carolina court was on notice that Thompson's mental capacity was being questioned, the court's 1 December 1997 order and the 6 January 1997 judgment of default did not reference Thompson's mental competency. The South Carolina Court of Appeals' opinion included in the record on appeal did not indicate that it considered Thompson's metal competency in relation to the 6 January 1997 default judgment. We conclude that the issue of jurisdiction in relation to Thompson's attorney at the 26 November 1997 hearing and his consent to the 1 December 1997 order has no effect on the South Carolina court's jurisdiction in entering an order against Thompson, a mentally incompetent person. "That an incompetent person may have been adequately represented in a legal proceeding by an attorney does not cure the jurisdictional defect." *South Carolina Dep't of Social Servs.*, 280 S.E. 2d at 209 (citation omitted). Furthermore, the South Carolina court's 1 December 1997 order indicates that Thompson may not have been represented at the time of the entry of default because her attorney was "resigning his representation of [defendants] in this matter if [defendants] do not comply with this Order." Accordingly, we conclude that the trial courts was correct in refusing to enforce the South Carolina judgment against Thompson because she was mentally incompetent at the time of the default judgment was entered.

In so concluding, we need not address plaintiff's remaining assignment if error that the trial court was erroneous in finding that Thompson did not receive notice of the 26 November 1997 hearing. The trial court's 4 October 1999 order granting Thompson's motion for relief from foreign judgment and denying plaintiff's motion to enforce the foreign judgment, and the 26 October 1999 order denying plaintiff's

motion for a new trial and/or alter/amend judgment are affirmed.

Affirmed.

Judges MARTIN and EDMUNDS concur.

Report per Rule 30 (e).

Judge EDMUNDS concurred prior to 31 December 2000.

A TRUE COPY
CLERK OF THE COURT OF APPEALS
OF NORTH CAROLINA

BY: s/SS
Deputy Clerk
2-6, 2001

No. 174P01 TWENTY-SIX DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

(Babb v. Thompson)

MAC BABB
V
HELEN LA VON W. THOMPSON and CHARLES G. WIRIDEN, JR.

From NC Court of Appeals
(COA00-4)
From Mecklenburg
(98CVS1104)

****

ORDER

Upon consideration of the petition filed by plaintiff in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 19th day of July, 2001.

S/Butterfield, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 20th day of July, 2001.

s/Christie Speir Cameron
Clerk, Supreme Court of North Carolina

SEAL OF THE SUPREME
COURT OF NORTH
CAROLINA

Copy to:
North Carolina Court of Appeals
Mr. Ralph A. White, Appellate Court Reporter Mr. John Webb, Attorney at Law, for Babb
Mr. Joseph T. Copeland, Attorney at Law, for Thompson, et al
Mr. Michael David Bland, Attorney at Law, Thompson and Wiriden
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SEAL OF THE SUPREME COURT OF NORTH CAROLINA

SUPREME COURT OF NORTH CAROLINA
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Mailing Address:
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Raleigh, NC 27602

20 July 2001

Mr. John Webb
Webb and Webb
19 W. Hargett Street
Suite 600
Raleigh, NC 27601

Re: Babb v. Thompson

No. 174P01

Dear Mr. Webb:

Motion by Plaintiff to Continue has been filed and the following order entered:

"Motion Denied by order of the Court in conference this the 19th day of July, 2001.

S/Butterfield, J.
For the Court"

Very truly yours,

s/Christie Speir Cameron
Christie Speir Cameron
Clerk of Supreme Court

Copy to:
West Publishing
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Mr. Ralph White, Appellate Court Reporter
Mr. Joseph T. Copeland, Attorney at Law, for Thompson et al

No. COA00-4

NORTH CAROLINA COURT OF APPEALS

****

MAC BABB, From Mecklenburg
v (99-CVS-1104)
HELEN LA VON W. THOMPSON and
CHARLES G. WIRIDEN, JR.

****

ORDER

The following order was entered:

The motion filed in this cause on the 23rd day of October 2000 and designated "Motion To Continue" is denied.

By order of the Court this the 26th day of October 2000.

Witness my hand and seal this the 26th day of October 2000.

_____

John H. Connell
Clerk of North Carolina Court of Appeals

cc:
Mr. John Webb
Mr. Christopher M. Vann
Mr. Michael David Bland
Mr. Joseph T. Copeland

FILED OCTOBER 4, 1999
CLERK, SUPERIOR COURT
MECKLENBURG COUNTY

NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
MECKLENBURG COUNTY 98-CVS-1104

MAC BABB,	)	
Plaintiff,	)	
	)	ORDER
v.	)	
	)	A TRUE COPY
HELEN LA VON W.	)	CLERK OF SUPERIOR
THOMPSON and	)	COURT
CHARLES G. WIRIDEN, JR.,	)	MECKLENBURG CO.
Defendants.	)	

By s/Assistant Deputy
Clerk Superior Court

THIS MATTER COMING ON TO BE HEARD, and being heard before the Honorable J. Marlene Hyatt, Superior Court Judge Presiding over the September 2, 1999 nonjury civil session of Superior Court for the 26th Judicial District upon Defendant Helen LaVon W. Thompson's Motion for Relief for Foreign Judgment and Plaintiff's Motion to Enforce Foreign Judgment; the Plaintiff appearing pro se, and the Defendant being represented by Christopher M. Vann; and upon reviewing the pleadings, the briefs, authorities cited by the parties, and hearing the arguments of counsel, the Court makes the following:

FINDINGS OF FACT

1. On January 6, 1998, Plaintiff obtained a default judgment against Defendant Helen LaVon W. Thompson in the Court of Common Pleas for Horry County, South Carolina. In the judgment entered by the South Carolina Court, the Court found that Defendant Thompson was in contempt of its July 7

and November 26, 1997 orders. The South Carolina Court entered a default judgment for Plaintiff in the total amount of $63,000.00 plus interest and attorney's fees.

2. The January 6, 1998 order of default judgment states that the matter came on for a hearing on November 26, 1997. The order does not state whether Defendant Thompson or her attorney of record was notified of the proceedings or whether Defendant Thompson or her attorney of record appeared at the hearing.

3. At the time of the hearing on November 26, 1997, Defendant Thompson was receiving treatment for a brain tumor and had recently suffered a stroke.

4. Defendant Thompson has submitted to this Court the affidavits of Dr. H. K. Shamasunder, Dr. Doddanna Krishna, Dr. John Beck, and Dr. James Thomas McDeavitt. These physicians have all examined and treated Defendant Thompson for her brain tumor during 1997 and 1998.

5. Dr. John Beck states in his affidavit dated October 22, 1998, "in my medical opinion, due to Helen Thompson's condition she would have been unable to properly participate in the preparation of the defense of the lawsuit after she was admitted to the Charlotte Institutute of Rehabiliation on September 4, 1997, and is incapable in cooperating in the preparation of the defense of the lawsuit now pending against her at this time."

6. Based upon the affidavits of Defendant Thompson's physicians, this Court finds that Defendant Thompson was not competent to participate in this litigation on November 26, 1997, the date of the default judgment hearing.

7. There is no indication in the January 6, 1998 order of the default judgment that either Defendant Thompson or her attorney of record received notice of the November 26, 1997 hearing.

8. This Court finds that Defendant Thompson did not have notice of the November 26, 1997 hearing by the South Carolina Court.

9. This Court finds that as a result of Defendant Thompson's brain tumor and stroke, she was not competent to proceed with her defense on November 26, 1997.

10. On January 26, 1998, Plaintiff filed a Notice of Filing of Foreign Judgment seeking to register and enforce the South Carolina order of default judgment in North Carolina.

11. N. C. Gen. Stat. Section 1C-1804(b) provides that a foreign money judgment is not entitled to full faith and credit under the United States Constitution and need not be recognized by North Carolina if the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable the presentation of a defense.

Based upon the foregoing Findings of Fact the Court makes the following:

CONCLUSIONS OF LAW

1. Defendant Thompson did not have notice of the November 26, 1997 hearing in which the South Carolina Court in Common Pleas entered a Default Judgment against her.

2. As a result of Defendant Thompson's brain tumor and stroke, she was not competent to proceed with her defense on November 26, 1997.

3. The South Carolina Judgment titled Mac Babb v. Helen LaVon W. Thompson and Charles G. Wiriden, Jr., et al., Civil Action No. 91-CP-26-3687A and Civil Action No. 91-CP-4619A is not entitled to full faith and credit under the United States Constitution and should not be recognized by North Carolina pursuant to N.C. Gen. Stat. Section 1C-1840(b)(1) since Defendant Thompson did not receive notice of the November 26, 1997 hearing and was not competent to proceed with a defense.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. That Defendant Thompson's Motion for Relief for Judgment is GRANTED. Plaintiff's Motion to Enforce Foreign Judgment is DENIED.

2. That the South Carolina Judgment registered in this matter is not entitled to recognition by North Carolina.

3. That the South Carolina Judgment registered with the Clerk of Court of Mecklenburg County under the name Mac Babb vs. Helen LaVon W. Thompson, Social Security No. 244-36-5966, and Charles G. Wiriden, Jr., Social Security No. 246-70-7625, Case No. 98-CVS-1104, is not recognized by North Carolina and is not entitled to be enforced in North Carolina.

4. That the South Carolina Judgment shall be stricken from the judgment books and lien dockets in Mecklenburg County and any other county in North Carolina in which the judgment is registered.

This the 29th day of September, 1999.

s/J. Marlene Hyatt
J. Marlene Hyatt
Superior Court Judge Presiding